



## The Commonwealth of Massachusetts

### OFFICE OF THE DISTRICT ATTORNEY FOR THE NORFOLK DISTRICT

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Suzanne Bump  
Massachusetts State Auditor  
State House  
Boston, MA 02133

January 17, 2019

Re: Massachusetts sentencing guidelines

Dear Auditor Bump:

Events have come to my attention which I believe intersect with the interest that you expressed during our recent conversations about the importance of the OSA conducting a broad range of non-financial audits. I understand your position that you are interested in audits that look at the implementation of state laws and programs created through the legislative process. I write today to call your attention to a situation unfolding in the criminal justice sentencing system.

The General laws provide for the creation of a Massachusetts Sentencing Commission pursuant to MGL Chapter 211E. Attached to this letter you will find the somewhat voluminous letter that the Massachusetts District Attorneys Association sent to the Chief Justice of the Trial Court during my recent MDAA presidency. The MDAA letter, dated last May 30, has received no response at all.

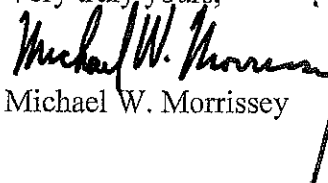
As expressed therein, I have concerns about several aspects of the commission process. What is perhaps most glaring is that the Sentencing Commission purposefully bypassed the Legislature at the conclusion of the process. Chapter 211 E, Section 3 (a) (1) states: "The commission by affirmative vote of at least six members of the commission and consistent with all pertinent provisions of this chapter and existing law shall recommend sentencing guidelines which shall take effect only if enacted into law." (Emphasis added.)

The guidelines have not been enacted into law, or even submitted to the Legislature for consideration or review. As fellow former Legislators, we might both perceive quite clearly the separation of powers implications of the courts printing, disseminating, and training judges based upon the text which, by right, should have been submitted to the Legislature for its review and revision. Some might disingenuously argue that the Sentencing Guidelines are presently "only advisory" or non-binding; Chap. 211E does not provide for the creation of non-binding guidelines. Further, if judges are being trained using these guidelines, the Trial Court is very clearly, if indirectly, communicating that they hold weight.

To the point of our conversations, and elegantly articulated on your web site, OSA's audits, investigations and studies are important tools to promote accountability and transparency, improve performance and make government work better. With no response to the MDAA's May 30 letter seeking to have the Trial Court address its accountability to the demands of Chap. 211E, it would appear that there is need for the OAS to look into whether that agency is operating outside the parameters of governing law. I would also underline, as pointed out on p. 8 of the MDAA's 14-page May response (also attached) that some recommended sentences would depart from the applicable statute – usurping the Legislature's exclusive domain of establishing penalties. It appears that the mere failure to submit and receive legislative approval is a violation of the law, as is dissemination without legislative imprimatur.

I ask that your office review the process including the failure of the Commission to submit the Sentencing Guidelines to the Legislature for approval before they were distributed for use by the Judges. I can think of no more remarkable current example of a failure to respect the separation of powers or failure of a governmental undertaking to be conducted according to its legislative mandate. In a case such as this, where the Judiciary manifests no intention to police itself, I believe the kind of objective review the Auditor's office offers is not only warranted but urgent. Please advise me if you would undertake this critical review.

Very truly yours,

  
Michael W. Morrissey

CC:

Hon. William Brownsberger, Senate Chair, Committee on Judiciary  
Hon. Claire Cronin, House Chair, Committee on Judiciary  
Chair, Senate Committee on Post Audit and Oversight  
Chair, House Committee on Post Audit and Oversight  
Commissioner of Probation Edward J. Dolan